

## **LMDC SUBMISSION ON MODALITIES AND PROCEDURES FOR THE EFFECTIVE OPERATION OF THE ARTICLE 15 COMMITTEE TO FACILITATE IMPLEMENTATION AND PROMOTE COMPLIANCE**

In accordance with paragraph 27(a) of the Conclusion of the Ad Hoc Working Group on the Paris Agreement (APA) on the third part of its first session (FCCC/APA/2017/2) and taking into consideration of the issues and questions in the informal note by the co-facilitators, the Islamic Republic of Iran on behalf of the Like-Minded Developing Countries Group (LMDC) in the UNFCCC has the honour of making this focused submission on the modalities and procedures required for the effective operation of the committee to facilitate implementation and promote compliance referred to in Article 15, paragraph 2, of the Paris Agreement (hereinafter “the Article 15 Committee”).

As this is the first LMDC submission on this topic, this will be more comprehensive rather than only focusing on the three questions raised by the co-facilitators.

### **I. Key Principles**

1. The Article 15 Committee under the Paris Agreement is a complementary institutional arrangement for the full, effective and sustained implementation of the Convention and its Paris Agreement. In adopting modalities and procedures for the Article 15 Committee, the APA should be guided by certain *key principles*:
  - a) The Article 15 Committee can in no way modify the rights or obligations of the Parties under the Paris Agreement or change the content or legal character of this Agreement and its provisions;
  - b) Promotion of compliance and facilitation of implementation under the Article 15 Committee should be in full accordance with the principles of equity and common but differentiated responsibilities and respective capabilities (CBDR and RC). The operation of the Article 15 Committee should be consistent with and based on the common but differentiated responsibilities between developed and developing country Parties under the Convention and its Paris Agreement – consistent with the differentiation between UNFCCC Annex I and non-Annex I Parties. Such an approach is mandated by the Paris Agreement, including its Articles 2.2, 3, 4.4, 4.5, 9.1, 10 and 11;
  - c) The Article 15 Committee shall pay particular attention to the respective national capabilities and circumstances of Parties, in particular the historical responsibilities and leadership of developed country Parties and special circumstances and specific needs of developing country Parties;
  - d) The provisions of Article 15 of the Paris Agreement shall be adhered to and given effect. In accordance with Article 15.2 of the Paris Agreement, the Article 15 Committee shall be expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive, and consistent with the spirit of “national determination” as set out in the Paris Agreement;
  - e) In this regard, the work on promotion of compliance and facilitation of implementation under the Article 15 Committee should be constructive, cooperative, pragmatic and purely technical, and respecting national sovereignty. Such work should not be political in nature, punitive or sanctions-oriented, accusatory, judgmental, or be treated as a dispute settlement process. In particular, any procedures and output of the work should be on the basis of the consent of the Party concerned;
  - f) The substantive review of nationally determined contributions (“NDCs”) is outside the scope of the Article 15 Committee.

## **II. Reflecting Principles of Equity and CBDR and Different National Circumstances**

*(This part includes a response to the third question in the informal note: “How would the consideration of national capabilities and circumstances of Parties be operationalized in the modalities for the operation of the Art 15 Committee?”)*

1. Bearing in mind that Paris Agreement is under the Convention, and recognizing that a Party to the Paris agreement may withdraw from the Paris Agreement but still remain a Party to the UNFCCC, differentiating according to whether a Party is listed under Annex I of the UNFCCC or not (i.e. Annex I and non-Annex I Parties) can provide greater clarity on the capabilities and circumstances of the Parties.
2. In this regard, the provisions of the Paris Agreement have defined differentiated obligations of developed and developing country Parties. The promotion of compliance and facilitation of implementation under the Article 15 Committee, including its activities, measures and outputs should be based on such differentiated responsibilities and obligations of developed and developing country Parties.
3. Article 15.2 of the Paris Agreement further indicates that when considering specific issues related to compliance and implementation of a provision of the Paris Agreement, the Committee should pay particular attention to the capabilities and circumstances of the Party concerned. The requirement that the Committee must “pay particular attention to the respective national capabilities and circumstances of Parties” applies at every stage of the process including, where relevant, by taking account of the lack of human, technical or other capacity of the Party concerned. This is important for the Committee to provide proper and useful outputs fit for that Party. This also means that different national circumstances and capabilities of developed and developing country Parties should be taken into consideration in every stage of the work of the Committee. Hence, Article 15.2 on national circumstances and capabilities is complementary to operationalize the principles of equity and CBDR and RC, rather than to replace the principles of equity and CBDR and RC.
4. Capabilities are crucial to promote compliance and facilitate implementation, in particular for developing country Parties. The Article 15 Committee must take adequate consideration of the particular vulnerabilities of developing country Parties and the additional support and flexibility they might need to implement the Agreement and comply with their obligations under it. Explicitly reflecting the particular vulnerabilities, limited capabilities and special circumstances of these Parties is appropriate. The work and outputs should focus on overcoming those difficulties and barriers caused by lack of support and limited capacities.

## **III. Scope of the Work of the Article 15 Committee**

1. The scope of the implementation facilitation and compliance promotion mechanism set up under Article 15 of the Paris Agreement refers to “the provisions of this Agreement” (Article 15.1 of the Paris Agreement). This means that the scope of the Article 15 Committee must include Articles 3, 4 7, 9, 10 11 and 13, as Parties have obligations under these provisions. In this regard, the work of the Article 15 Committee should cover all the elements of the Paris Agreement, i.e., mitigation, adaptation, finance, technology development and transfer and capacity-building in a balanced manner, rather than adopt a mitigation focused approach. The operationalization of the Committee should be consistent with Articles 4.3, 4.4, 4.5, 4.15, 9.1, 9.3, 9.4, 9.5 and 9.7 through which a differentiated

approach based on the Convention and its Paris Agreement will be developed to deal with issues related to the mandate of the Committee.

2. Although the scope of work of the Committee should cover all the elements of the Agreement, the specific scope of the two functions of the Article 15 Committee, i.e., promotion of compliance and facilitation of implementation, should be distinct from each other. Given the dual functions of the Article 15 Committee, when facilitating implementation, all provisions of the Paris Agreement would be covered within the scope; while with respect to promoting compliance, those provisions establishing mandatory obligations for the Parties would be covered.
3. Specifically, promotion of compliance is for the mandatory provisions of the Paris Agreement – i.e. those provisions in which “each Party/Parties/all Parties or developed country Parties shall” do something, as follows:
  - a) For “each Party/Parties/all Parties”, the mandatory provisions include:
    - i. preparing, communicating and maintaining NDCs, as referred to in Articles 4.2 and 4.9;
    - ii. providing information on NDCs and accounting for NDCs, as referred to in Articles 4.8 and 4.13;
    - iii. take into consideration the issues of response measures, as referred to in Article 4.15;
    - iv. fulfilling relevant requirements on joint implementation, if they reach such an agreement, as referred to in Articles 4.16, 4.17 and 4.18;
    - v. engaging adaptation planning process and the implementation of actions, as referred to in Article 7.9;
    - vi. providing transparency information and participate in a facilitative, multilateral consideration of progress to track progress, as referred to in Articles 13.7 and 13.11; and
    - vii. communicating measures on capacity-building and cooperate in education, public awareness and participation, as referred to in Articles 11.4 and 12.
  - b) For “developed country Parties”, the mandatory provisions include:
    - i. providing financial resources to assist developing country Parties in mitigation and adaptation in continuation of their existing obligations under the Convention, as referred to in Article 9.1;
    - ii. providing support to developing country Parties to implement the relevant provisions of the Paris Agreement, as referred to in Articles 4.5, 7.13, 10.6, 13.14 and 13.15;
    - iii. communicating indicative quantitative and qualitative information on provision and mobilization of climate finance, as referred to in Article 9.5; and
    - iv. providing information on financial, technology transfer and capacity-building support provided to developing country Parties, as referred to in Articles 9.7 and 13.9.
4. Facilitation of implementation could cover a boarder scope and probably include all provisions of the Paris Agreement, such as those non-mandatory ones with “each Parties/Parties/all Parties/developed country Parties/developing country Parties should”. Developing country Parties’ failing compliance with the mandatory provisions should not be treated as a compliance issue if it is caused by the lack of finance, technology development and transfer and capacity-building support by developed country Parties. Such failing should

be addressed through facilitation of implementation, unless otherwise decided by that developing country Party concerned.

5. The Paris Agreement is a carefully negotiated outcome under the Convention, which is a delicate balance between international treaty obligations and the exercise of national sovereignty. The balance was achieved through enabling a “nationally determined” approach as regards the contributions of Parties and in “enhancing the implementation of the Convention”. The mandatory provisions of the Paris Agreement are on the “obligations related to conduct/procedures”, rather than the “obligations related to products/results”. Therefore, the work of the Article 15 Committee, in particular in the promotion of compliance, should deal with the issues related to “whether or not Parties have done something” (such as communicating a NDC, providing information and participating in a process or cooperation), rather than assess the quality, content and achievement.
6. In this regard, the following two aspects would be outside the scope of work of the Committee:
  - a) the achievement of NDCs, quality of the information and effects of domestic policies, unless the Party concerned needs the assistance in these aspects; and
  - b) the collective long-term goals as set out in Articles 2.1, 4.1 and 7.1, which are not the obligations in the Paris Agreement.
7. Furthermore, it is still premature to discuss the facilitation of the implementation of the paragraphs of decisions adopted or to be adopted by the COP/CMA, which will prejudge the outcome of the negotiations on other issues related to the implementation of the Paris Agreement.

#### **IV. Purpose of the Article 15 Committee**

1. It is worth highlighting that the purpose of the Paris Agreement is to enhance the implementation of the Convention as reflected in Article 2 of the Paris Agreement. The Article 15 Committee should therefore be focused on achieving this purpose and building on the experience and lessons learned under the UNFCCC.
2. The Article 15 Committee is intended to provide a way through Parties can be assisted in their implementation of and compliance with the provisions of the Paris Agreement. Therefore, the Article 15 Committee should be a team of experts who will assist Parties in their implementation and compliance whenever these Parties concerned need such assistance.
3. The language of Article 15 makes clear that this is not an “enforcement” mechanism, but rather that it is to be “facilitative in nature”. A mechanism that is facilitative in nature would only take measures to encourage means by which the Party itself can enhance its implementation and compliance including through capacity-building and by ensuring the provision of support to developing country Parties, while assessing compliance of developed country Parties in mitigation, adaptation and provision of support in accordance with relevant provisions of the Paris Agreement, and would not be to punish a Party for failing to comply and implement its obligations. The Committee is therefore not intended to be a quasi-judicial or adjudicative body of any kind, but rather is meant to facilitate implementation and promote compliance by Parties in a cooperative manner.

## **V. Composition of the Article 15 Committee**

1. There should be a single Committee. The Committee should reflect the expertise referred to in paragraph 102 of Decision 1/CP.21, i.e., “recognized competence in relevant scientific, technical, socioeconomic or legal fields”. This criteria should be applied in a pragmatic manner to facilitate membership of some experts with long experience in climate change issues and who are familiar with institutional as well as linkages of various related mechanisms and arrangements under the Convention and its Paris Agreement. As long as these disciplines are broadly represented on the twelve-person Committee as a whole, there should be no need for strictly equal representation of three experts from each of the four designated fields. The modalities and procedures regarding composition should not be too prescriptive, but must allow sufficient flexibility to the CMA to elect various experts to address different issues as may arise from time to time. Experts in the committee, in each field, must also have knowledge and experience of the national/regional capabilities and circumstances of the Party/Parties found to need facilitation in the implementation of their commitments. The Committee members should serve in their personal capacity during their term on the Committee.

## **VI. Procedures for the Operation of the Article 15 Committee**

1. Article 15.2 provides that the Committee will “function in a manner that is transparent, non-adversarial and non-punitive”. It must respect the sovereignty of each Party and cannot be intrusive. As noted above, the Article 15 Committee must under no circumstances apply penalties or sanctions, or operate in the nature of a dispute settlement mechanism.
2. The Committee must hence operate in a transparent, facilitative, non-adversarial and non-punitive manner in every stage, ensuring the adequate participation of the Party concerned, as clearly stated in Article 15.2 of the Paris Agreement.

### **Trigger**

3. The Article 15 Committee should be triggered at the request of the Party seeking assistance. It is a pragmatic and feasible solution that self-trigger by the Party concerned should be recognized as the trigger for the commencement of the Committee activities. A Party may initiate the self-trigger voluntarily at any time when facing problems, difficulties and barriers related to compliance and implementation or having the possibility of failing the compliance and implementation. Such self-trigger mode is most consistent with the facilitative and non-adversarial nature of the mechanism.
4. Other (non-self-triggered) modes for triggering the Committee’s procedures that may be considered by the future sessions of the CMA, if Parties agree, must, in all cases, adhere to the facilitative, non-adversarial, and non-punitive nature of the Article 15 Mechanism. Such modes will need to meet certain conditions, such as, after prior communication and consultation, obtaining the consent of the Party concerned to the triggering of the Committee’s procedures.
5. However, before the Committee is made operational, it is not pragmatic to discuss the conditions, circumstances and guidance for other forms of triggers, which will provoke more political debates and prolong the negotiation process. Furthermore, allowing the procedures of the Committee to be triggered with respect to a Party by other Parties risks politicizing the

process, which may be inimical to facilitating implementation and promoting compliance. As the Committee is to be “facilitative” and “non-adversarial”, and whose purpose is to help Parties seeking assistance in facilitation their implementation of and compliance with the provisions of the Agreement, allowing a Party or a group of Parties to trigger the Article 15 Committee with respect to another Party or group of Parties could be considered “adversarial” and potentially “punitive”, contrary to the requirements of Article 15.2.

6. Despite there being no “third-party trigger”, the constituted Convention bodies on finance, technology development and transfer and capacity-building, such as the Standing Committee on Climate Finance, Technology Executive Committee, Paris Committee on Capacity-building and etc., could be invited to analyze some general issues or systematic challenges related to the compliance with and implementation of the provision of support by developed county Parties and inform the Committee to consider these issues or challenges as appropriate.

### **Transparency, participation, and confidentiality**

7. The rules of procedure of the Committee should be consistent with its transparent and participatory nature. The procedures should provide for the participation by and form of consultation with the Party concerned, as well as rules to address conflicts of interest and confidentiality.
8. Once a self-trigger is initiated by the Party concerned, there should be a consultative process between the Party and the Article 15 Committee, with a view to achieving a mutual understanding or an agreement on the plans for the activities and measures to be undertaken by the Article 15 Committee, including approaches of the work, time schedules, sources of inputs, outputs and etc.
9. The party concerned should be fully engaged in every stage of the work of the Committee from the beginning of the process to the conclusion of the work, including, being consulted at various stages, making representation and having an opportunity to respond; exploring causes, challenges and constraints; finding measures and means for addressing the challenges; finalizing the report for the outputs; and consideration of national circumstances for designing further actions and plans, as appropriate.
10. During its proceedings, the Committee can invite the Party concerned to provide written material, invite other bodies of the Convention to provide information, or invite the Party concerned and other bodies of the Convention to have a direct dialogue with the Committee. Inputs by the concerned Party need to be fully considered by the Committee in determining any outputs regarding that Party’s implementation or compliance. Prior to concluding its proceedings and releasing its output, the Committee shall seek opinions from the Party concerned, and give opportunities to the Party concerned to explain, defend or make recommendations.
11. In all cases, the Party concerned must be entitled to designate one or more persons to represent it during all stages of consideration by the Committee.
12. The Committee must protect confidential information. Deliberations by the Committee must also be confidential. A guarantee of confidentiality would encourage self-triggering by Parties in need of assistance, as well as the full and frank exchange of information between the Party concerned and the Committee.

### **Activities and Outputs**

*(This part includes a response to the second question in the informal note: "What kind of outputs of the Committee's activity would effectively facilitate implementation and promote compliance, and how?")*

13. The following activities of work could be considered by the Committee:
  - a) paper work such as information analysis and technical research;
  - b) interviews with the Party concerned and relevant constituted bodies under the Convention and its Paris Agreement; and
  - c) field work in the country of the Party concerned, as appropriate.
14. Outputs of the work of the Committee should be developed in a consultative and cooperative way with the Party concerned and reflect the views and concerns of that Party.
15. The outputs of the Committee to a large extent will be shaped by the nature of its work, its mandate as well as its organizational arrangement, its structure and the rules and procedures of engagement by the Party concerned. The outputs of the Committee should be fully informed by the nature and principles of its mandate in accordance with Article 15 of the Paris Agreement. The outputs of the Committee should be reached by consensus, and be with the agreement of the Party concerned. The Committee has to fully consider national capability and circumstances, while taking into account the finance, technology and capacity-building needs of developed country Parties.
16. The Committee's output should be advisory and recommendatory in nature. The output and reasoning are to be provided only to the Party concerned, and not to other Parties, persons or entities, or to the CMA, unless requested by the Party concerned. Absent these characteristics, the process would infringe on the sovereign rights of the Party concerned, and would be contrary to the objective of a facilitative, non-adversarial and non-punitive procedure.
17. The final measures taken by the Committee should aim at facilitating implementation of and promoting compliance with the provisions of the Paris Agreement, instead of creating confrontation or imposing punitive measures, taking into account the different capabilities of Annex I (developed country) Parties and non-Annex I (developing country) Parties, particularly the special circumstances of developing country Parties. Such measures shall include providing financial, technological and capacity-building support to non-Annex I (developing country) Parties and to address challenges of implementation or compliance by such Parties which are caused by adverse national situations or systemic challenges and circumstances.
18. In producing the outputs, the Committee should take the following factors into consideration:
  - a) In the case of non-legally binding provisions in the Paris Agreement, the Committee should focus its work to facilitating implementation, such as giving advice on implementation or providing support and means of implementation to developing country Parties.
  - b) In the case of legally binding provisions in the Paris Agreement, the Committee could also consider looking into assisting the Party concerned to promote compliance with such legally binding provisions such as the development of a plan. In this context, special circumstances, special needs and limited capacities of developing country

Parties shall be fully considered.

19. The contents of the outputs of the Committee could include the following aspects, as appropriate:
  - a) The best practices, experience and lessons learned on compliance and implementation;
  - b) Technical information on causes and challenges;
  - c) Suggestions and policy options to and improvement plans for Parties to consider; and
  - d) More detailed action plans for developed country Parties to promote their compliance and facilitate their implementation; and
  - e) Recommendations to the relevant constituted bodies under the Convention and its Paris Agreement on assisting developing country Parties to get access to adequate finance, technology and capacity-building support.

## **VII. Linkages with Other Arrangements**

*(This part includes a response to the first question in the informal note: "How can potential linkages to other arrangements under the PA be designed to ensure that the Committee operates effectively while still preserving the independence of these arrangements?")*

### **Linkage with the mechanisms on finance, technology and capacity-building**

1. The compliance and implementation of developing country Parties' obligations depends on adequate and continuous support by developed country Parties. Therefore, linkages to mechanisms on finance, technology development and transfer and capacity-building under the Convention and its Paris Agreement should be the priority of the discussion on the "linkages and relationships". There are three aspects of the possible linkage:
  - a) The Committee could invite the relevant constituted bodies of the mechanisms on finance, technology and capacity-building to participate in its work if the Party concerned agrees;
  - b) The Committee could also make recommendations to the relevant constituted bodies for their consideration, in order to facilitate the provision of finance, technology and capacity-building support to developing country Parties facing the problems, difficulties and barriers related to compliance and implementation; and
  - c) As mentioned above, the relevant constituted bodies could share their research with and provide the information to the Article 15 Committee on some general issues or systematic challenges related to the compliance and implementation.

### **Linkage with the mechanism on response measures**

2. Furthermore, there should be a linkage to be established between the Article 15 Committee and the relevant institutional arrangement on response measures. Such a linkage deserves further discussions and elaboration.

### **Premature to discuss the linkage with Article 13**

3. However, it is still premature to decide whether there is a linkage between Article 13 and Article 15 of the Paris Agreement, since the modalities, procedures and guidelines of the enhanced transparency framework is still work in progress, with a large number of ambiguities. Potentially, the information under the enhanced transparency framework might become a useful source of input for the Article 15 Committee, only upon the mandate by the



Party concerned to allow the Committee to use such information. Nevertheless, the linkage with the transparency framework should not, in any way, be used to as a trigger for the work of the committee.

**No linkage with Article 14**

4. In accordance with Article 14.1 of the Paris Agreement, the global stocktake is to periodically take stock of the implementation of the Paris Agreement to assess the collective progress towards achieving the purpose of Paris Agreement and its long term goals, without evaluating the performance of a individual Party. Therefore, there is no direct linkage between Article 14 and Article 15. If all Parties agree, the future sessions of the CMA may further consider elaborating the linkage between these two Articles as appropriate, after several rounds of the GST are conducted.

**Premature to discuss the linkage with Article 6**

5. Also, it is quite premature to discuss the linkage between Article 6 and Article 15, because there is still a large amount of divergence on designing the Article 6 mechanism.

**Relationship with the CMA**

6. The Committee should report annually to the CMA, as mandated by Article 15.3 of the Paris Agreement. The report of the Committee to the CMA should include a report of its activities and some general research findings (non-specific to individual Parties) arising from its work with respect to cases in which the Committee's procedures to assist individual Parties facilitate implementation or promote compliance with the provisions of the Paris Agreement. The Committee may also inform the CMA of the specific non-binding recommendations it has made, if any, at the request of the Party concerned.
7. The CMA will have authority over and provide guidance as may be needed to the Article 15 Committee on an ongoing basis.

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